

Application No. 10/763,444
AMENDMENT dated December 30, 2008
Reply to Office Action of September 3, 2008

REMARKS

Claims 1-13 and 18-22 are pending, and claims 14-17 and 23 are withdrawn. Claim 9 has been amended to include the limitation of claim 11, and claim 11 has been canceled. Claim 2 has been amended to correct dependency and claim 19 has been amended to correct a typographical error. The Examiner's indication that claims 3-8 are allowable is noted with appreciation.

Claims 1, 2, 18, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0048621 A1 to Boyd et al. ("Boyd") in view of U.S. Patent No. 6,758,130 to Sargent et al. ("Sargent") and U.S. Patent No. 4,253,358 to Illy. The Applicants respectfully traverse this rejection.

With respect to claim 1, the applied references fail to disclose or suggest a beverage preparation system having "means for automatically adjusting a temperature of said aqueous medium" and "a user interface for initiating an operating cycle independent of the beverage type being dispensed" as recited in claim 1.

Regarding the disclosures of Boyd and Illy, the Office Action conclusorily states "It would have been obvious to one skilled in the art to provide the device of Boyd with the user interface taught in Illy, in order to allow a user to make automatic selections of various types of beverages." (Office Action, page 3.) "[R]jections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007) quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006); MPEP 2142. Without an articulated objective reason to combine the teachings of references, a mere statement that the claimed invention is within the capabilities of one of ordinary skill in the art is insufficient to establish a *prima facie* case of obviousness. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993); MPEP 2143.01.

Because the Office Action lacks an explanation why the asserted modification would have been obvious, a *prima facie* showing of obviousness has not been made.

Moreover, there are express statements in Boyd that would deter modifying the cartridge system as proposed in the Office Action. Furthermore, as asserted in the Office Action, the toggle switch of Illy would have to be modified, removing a portion of its function, further deterring its proposed modification and rendering it unsatisfactory for its intended purpose. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP 2143.01.

Additionally, evidence rebutting a *prima facie* case of obviousness can include evidence “that the prior art teaches away from the claimed invention in any material respect,” *In re Peterson*, 315 F.3d 1325, 1331 (Fed. Cir. 2003). Here both Boyd and Illy, teach away from the claimed system.

Boyd directly teaches against the operator interfering with the brewing of the coffee and rather leaves all aspects of brewing to the machine once the packet is inserted. Specifically, Boyd states,

“a person desiring weaker coffee may purchase packets designated such in order to direct the machine to add water to the brewed coffee beverage in accordance with proper brewing procedure. This avoids problems associated with ill-advised attempts to dilute coffee by decreasing the quantity of coffee used, a change which may result in a corresponding change in bed depth, and thus in an undesirable change in coffee taste” ¶ 36.

Rather, the present claim is directed to a “user interface for initiating an operating cycle independent of the beverage type being dispensed”. This is in direct opposition to Boyd in that the user interface of claim 1 allows a certain degree of control over the beverage preparation, instead of the single cartridge, single resultant product disclosed in Boyd.

Illy similarly teaches against the present system. Illy discloses a toggle switch T with three positions, I, II, and III, which operate to cause the machine to switch from rest (I) to heat (II) and from heat (II) to pump (III). Illy discloses that the pump is to be operated once the water has reached the required temperature of 80° to 90°C. resulting in signal lamp S and heater 3 turning off. This teaching is directly opposed to claim 1 which states “d. means for automatically adjusting a temperature of said aqueous medium based on said code prior to supply of said aqueous medium to the beverage cartridge”. The disclosure of Illy does not teach that the temperature is automatically adjusted based on a code and rather teaches a machine that is to be operated at a specific temperature for all brewing of beverages.

In view of the above comments as they apply to claim 1, it is respectfully submitted that claims 2, 18, and 19 dependent therefrom are allowable as well.

Claims 9-13 and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Boyd. The Applicants respectfully traverse this rejection.

With regard to claim 9, Boyd fails to disclose a low pressure beverage preparation system comprising a memory “wherein the memory at least stores information about the order of beverage cartridges dispensed by the beverage preparation machine” as presently recited in claim 9.

Boyd does not disclose a memory for storing information after dispensing a beverage from the cartridges about operating characteristics used by the beverage preparation machine to dispense the beverage from the beverage cartridges, as presently recited in claim 9. Boyd only discloses a memory or data storage 150 containing information about packets 10. (*See* Boyd, ¶ 33.) More specifically, Boyd discloses merely reading from the data storage, and does not disclose writing to the data storage, as is required by the recited memory of claim 9 for storing information after dispensing a beverage from the cartridges. There is no disclosure in Boyd of altering its data storage 150 based upon operating characteristics of dispensed beverages.

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In view of the above comments as applied to claim 9, it is respectfully asserted that claims 10, 12, 13, and 20-22 dependent therefrom are allowable as well.

For all of the reasons mentioned above, the Applicants respectfully request reconsideration and allowance of all pending claims.

The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,
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